

PorkWorks Multiple Fill Request

Revised 7/97

Agreement # \_\_\_\_\_  
(For internal use only)

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by and between the Animal Nutrition Division of CARGILL, INCORPORATED, a Delaware corporation with principal mailing address of P.O. Box 9300, Minneapolis, Minnesota 55440 (hereinafter referred to as "Cargill"), and

\_\_\_\_\_  
DBA \_\_\_\_\_  
Proprietorship/Partnership/Corp.  
(Please circle one)

\_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_

\_\_\_\_\_  
County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

\_\_\_\_\_  
Social Security Number or Taxpayer Identification Numbers

(hereinafter referred to as the "Producer").

## Acknowledgment by Producer:

Cargill is in the business of supplying PorkWorks pigs to Producers. Cargill's demand for PorkWorks pigs far exceeds Cargill's ability to supply said demand. As a result, Cargill is taking Request's for pigs from Producers with the understanding that the initial fill date as set forth below may not be met on time or at all. Producer must share this risk of uncertainty in order for Cargill to proceed in the processing of Producer's Request. Nevertheless, if the initial fill date is met and PorkWorks pigs are delivered to the Producer in the quantity set forth below all terms and conditions of this Request shall be in full force and effect.

Notwithstanding the foregoing or anything to the contrary in this Request, Cargill may void this Request within 30 days after Producer executes this Request without penalty or liability to Cargill. If Cargill fails to submit a written cancelation to Producer within said 30 days, Producer shall be bound to accept delivery of Cargill PorkWork pigs when Cargill can deliver same regardless of any date set forth below, unless otherwise agreed to between the parties. All other terms and conditions below being in full force and effect. Cargill will coordinate the initial delivery date with Producer.

I, [REDACTED] (Producer), acknowledge that I have read and understand the above and will proceed with the execution of this Request to my detriment.

Signature [REDACTED]

Date

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, the parties hereto agree as follows:

A. Cargill agrees:

1. To use its best efforts to provide for purchase by the Producer approximately 570 head of Cargill PorkWorks pigs ("Group") with a Group average weight of between 45 and 65 pounds from Cargill's P2 off-site nurseries or other nurseries as designated by Cargill. These pigs will be delivered to Producer at one or more of Producer's facilities at the address stated above or as instructed by Producer. The initial date for the delivery of the first Group of PorkWorks pigs shall be on or about           . Cargill shall deliver 6 Groups of PorkWorks pigs in the quantities as set forth above in consecutive orderly Turns with each turn not to exceed 24 weeks between the prior delivery of PorkWorks pigs. For the purposes of this Request a Turn shall mean the sale and replenishment of Cargill PorkWorks pigs by Producer. For the purposes of this Request a Fill or Single Fill shall mean the placement of 1 Group of PorkWorks pigs at Producer's facilities pursuant to this Request. The total number of pigs requested by Producer and delivered to by Cargill under this Request Agreement shall be 3420 head. Attached as Exhibit A is an anticipated delivery schedule showing approximate order sizes and delivery dates. In the event Producer desires to receive PorkWorksP2 pigs at multiple facilities, Exhibit A may be duplicated for each facility Producer desires delivery and marked with the facility name.

Notwithstanding the foregoing, it is expressly understood by the Producer that regardless of the number of facilities that Producer receives delivery of PorkWorks pigs, Producer shall not be entitled to more PorkWorks pigs, per Turn/Fill, than set forth in this Section A.

2. To fill orders for a single building at up to 1,200 head capacity from a single source nursery, provided, however, that Cargill may fill orders for more than a single building, or a single building of more than 1,200 head capacity, from one or more Cargill nurseries or other nurseries as designated by Cargill.

B. Producer Agrees:

1. To purchase from Cargill all PorkWorks feeder pigs delivered by Cargill to Producer under the terms of this Request.

2. That notwithstanding anything in this Request to the contrary, Cargill's obligation is to use its best efforts to deliver pigs equal to at least ninety-five percent (95%) of the number of pigs requested by the Producer (95% of the number requested hereinafter referred to as the "Tolerance Amount"). The final number of pigs delivered on any Fill date shall be determined no later than 48 hours after the time of delivery, and shall be net of the number of PorkWork pigs which arrive dead or which die within 48 hours of delivery.

3. In the event Cargill delivers a Fill of pigs which, after deducting pigs arriving dead or dying within 48 hours of delivery, is less than the Tolerance Amount, then Cargill shall, in its sole discretion and as Producer's sole remedy, either (i) promptly deliver from the same single nursery source additional PorkWorks pigs to Producer so that, after delivery of the additional pigs, the total number delivered against the Request order is at least the Tolerance Amount, or (ii) pay to Producer for each pig not delivered below the Tolerance Amount \$9.80 ( $\$0.07 \times 140 \text{ days} = \$9.80$ ). Any sums paid under this Section B(3) shall be paid at the end of the relevant Turn.

4. In the event Cargill delivers more than the number of pigs Requested, Producer shall purchase any such pigs under the terms of this Request, unless Cargill and Producer otherwise agree in writing.

5. That all claims for deficiencies (other than dead pigs, or pigs with clinical sickness as determined in accordance with the Pork Works Health and Veterinary Procedures stated in Exhibit B - the "H & V Procedures") in the PorkWorks pigs sold and purchased under this Request, and which are discovered within 48 hours of delivery, are to be fully and finally settled between Cargill and Producer by either (at Cargill's sole discretion): (i) Cargill's replacement of the deficient pigs, or (ii) the allowance for discounts in accordance with Cargill's current PorkWorks Blemished Pig Adjustment Policy (the "Blemish Policy"), which may be amended or adjusted by Cargill from time to time. A copy of the current Blemish Policy is attached hereto as Exhibit C. Producer agrees that the provisions of the Blemish Policy constitute its sole remedy against Cargill for any such deficient pigs.

6. That in the event any pigs delivered under this Request show observable, clinical sickness (other than deficiencies addressed in the Blemish Policy) within forty eight (48) hours of their delivery, then the notice, documentation, evaluation and compensation provisions of the H & V Procedures shall apply to such pigs. Producer agrees that the provisions of H & V Procedures constitute Producer's sole remedy against Cargill for any such pigs, and acknowledges that Cargill has no liability

for pigs which first show an observable, clinical sickness more than 48 hours after delivery.

7. To feed only Cargill-recommended products to the PorkWorks pigs purchased under this Request.

8. To dispose of all pigs which arrive dead or which die at any time after delivery. Such disposal shall be in accordance with sound and generally accepted disposal methods, and in compliance with all applicable health and environmental laws and regulations.

9. That this Request is for the number of Fills and the total number of PorkWorks pigs stated in Section A(1) above, and that Cargill has no obligation to accept, in whole or in part, any future Requests from Producer.

10. To euthanize and properly dispose of all pigs which Producer may claim have little or no value.

C. Purchase Price and Payment

1. The purchase price for all pigs sold and purchased under this Agreement shall be the price then published by Cargill for its PorkWorks pigs during the week immediately preceding the week the pigs are delivered, subject to any adjustments as stated in Section B above. If for any reason Cargill does not publish its PorkWorks prices during any week prior to the week of delivery, the price of PorkWorks pigs shall be the last price published by Cargill.

2. Payment for all sums due by Producer to Cargill under this Request, including without limitation the purchase price for all pigs and feed sold by Cargill to Producer hereunder, is due upon receipt of Cargill's invoice, or, for sums due for the purchase of pigs, upon the signing of all receiving documents. All feed payments shall be by Cargill's direct draw on Producer's bank account via the "automated clearing house or ACH" system or by such other payment method as Cargill may reasonably direct Producer. Producer agrees to provide all notices to its bank or other financial institutions, and to sign and deliver all authorizations, certificates and other documents necessary to establish an account which allows Cargill the right to make direct draws as contemplated by this Section C. In the event Cargill makes a draw on Producer's account but the account does not have sufficient funds to pay, or for any other reason Cargill is not able to make a direct draw for payment in full on Producer's account for purchases outstanding, Producer shall arrange for immediate payment to Cargill by certified or cashier's check or other wire transfer, as Cargill may reasonably instruct Producer.

#### D. Pricing Matrix

1. Producer and Cargill understand that the parties have discussed and have agreed that, assuming Producer operates within the assumptions stated below, Producer may be able to realize, for the pigs sold and purchased under this Request, a return per pig space per year (this number hereinafter the "Annual Return") as stated on the matrix prepared by Cargill for Producer. The Annual Return is based upon Cargill's matrix developed for Producer, including the current assumption for feeding programs which include complete, concentrate or base mix swine feed products, as appropriate, a copy of which is attached as Exhibit D. Producer confirms, by signing this Request, that Producer has seen a copy of this matrix, Producer understands it and has had an opportunity to discuss same with a Cargill representative to Producer's satisfaction including but not limited to the assumptions behind the matrix and the operation of the matrix which leads to the calculation of the Annual Return.

a. Cargill reserves the right, in its sole discretion, to update or amend the matrix from time to time as market or other conditions may dictate.

b. CARGILL DOES NOT GUARANTEE THE ANNUAL RETURN TO THE PRODUCER. If this Request provides for less than three consecutive turns, and thus less than one full year of feeding and finishing Cargill PorkWorks pigs by Producer, Producer's actual return per PorkWork pig will more than likely be reduced below the Annual Return in a similar proportion. WHILE CARGILL BELIEVES THAT THE PRODUCER WOULD HAVE THE POTENTIAL TO REACH THE ANNUAL RETURN BASED UPON, AMONG OTHER THINGS, CARGILL'S KNOWLEDGE OF PRODUCER'S OPERATIONS, PRODUCER'S ACTUAL RETURN PER PIG SPACE PER YEAR MAY VARY FROM THE ANNUAL RETURN. FURTHER, THE ANNUAL RETURN ASSUMES, AMONG OTHER THINGS, THE FOLLOWING, OVER WHICH CARGILL HAS NO CONTROL:

1. that Producer forward contracts for the sale of the pigs delivered under this Request on the same date that Cargill prices the pigs to the Producer,
2. that Producer fixes its feed requirements and price on or about the date of delivery of the pigs, and
3. that Producer exercises sound, and generally accepted animal husbandry practices in the care, management and feeding of the pigs. The failure of the Producer to operate within these assumptions will make the matrix and the calculation of the Annual Return essentially meaningless.

#### E. Rescheduling and Cancellation

1. Notwithstanding anything to the contrary as set forth in any other Section of this Request. Both Cargill and Producer have the right to delay a Single Fill one time per Fill for up to 60 days, in whole or in part and without penalty, at any time up to two (2) weeks prior to the shipment week, subject to Section E below. In the event Producer delays or reschedules a Single Fill order in whole or in part within the two (2) week period prior to the shipment week, then Producer shall pay to Cargill a rescheduling charge of \$5 per head, for those pigs not delivered as scheduled.

2. Both Cargill and Producer have the right to cancel this Request in whole at any time subject to the following terms:

The canceling party shall pay to the non-canceling party liquidated damages equal to the amount as calculated pursuant to the below formula:

$\$.07/\text{day} \times 140 \text{ days (140 days equals one fill)} = \$9.80/\text{head}$   
 $\times \text{the number of pigs per fill} \times 2 = \text{liquidated damages for the non-canceling party.}$

3. Notwithstanding anything in this Section E to the contrary:

a. Cargill may, in its sole discretion, treat any request by Producer to (i) cancel more than 50% of the original number of pigs ordered, or (ii) reduce the number of pigs ordered below 200 or such other minimum order amount as Cargill may notify Producer from time to time, as a complete cancellation, at which time this Request shall automatically terminate, subject to Producer's obligation to pay to Cargill liquidated damages pursuant to the formula as set forth in Section E(2) above, and

b. Cargill shall consider all requests to reschedule deliveries in good faith, but shall not be compelled to agree to any rescheduling of deliveries more than 2 weeks before or 2 weeks beyond the final delivery week stated in Section A(1) above. In the event Producer requests a delivery week outside this period, Cargill may, in its sole discretion, consider this request as a cancellation of the number of pigs requested to be so rescheduled and Producer shall pay Cargill liquidated damages pursuant to the formula as set forth above in Section E (2).

4. In the event Cargill fails to deliver all or any part of a single fill within fourteen (14) days of an agreed delivery week, Cargill will pay to Producer a sum equal to \$.07 per day per pig for each day that any pig is delivered late, provided that Producer's facility is empty and ready to receive Cargill's P pigs at all times during the period for which such sum is paid, and provided that in no event shall the aggregate amount paid for any late pig exceed \$9.80 per head. Payment from Cargill shall be due the Producer 140 days after the scheduled delivery week. In the event that during the delay period the Producer fills the space intended for housing Cargill's P2 pigs with pigs from any other seller or source, Cargill's obligations under this Agreement shall

automatically cease, Producer's action shall be considered a cancellation and Producer shall pay Cargill liquidated damages pursuant to the formula as set forth above in Section E (2).

F. Notices

All notices required to be given hereunder shall be in writing and shall be sent by postage prepaid, certified, or registered mail to the address below:

If to Producer:

[REDACTED]

If to Cargill:

PorkWorks  
Cargill, Incorporated  
409 Vandiver  
Building 6, Suite 203  
Columbia, MO 65202

G. Governing Law

This Agreement shall be governed by and construed according to the laws of the State of Minnesota, without giving effect to its conflicts of laws principles.

H. Arbitration

Any and all controversies, disputes and claims arising out of or relating to this Agreement shall be settled by arbitration in Minneapolis, Minnesota, or such other location as the parties may agree in writing. The arbitration shall be before a panel of three arbitrators, with each party to choose its own arbitrator, and the third being chosen by agreement between the two party-appointed arbitrators. In the event the two party-appointed arbitrators cannot agree on a third within 60 days of the appointment of the second arbitrator, then both parties shall apply to the American Arbitration Association ("AAA") for the appointment of the remaining arbitrator. Otherwise, any arbitration is to be conducted in accordance with the then existing general commercial arbitration rules of the AAA, and judgment upon the award of the arbitrators may be entered in any court having jurisdiction.

I. Incorporation by Reference. Exhibits A through D attached hereto are hereby incorporated by reference and made a part hereof.

J. Miscellaneous

1. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided that neither party may assign this Agreement in whole or in part without the prior written consent of the other. Any attempted assignment in violation of this provision shall be void.

2. Neither party shall be responsible for the delay or failure to perform their obligations hereunder when due to circumstances beyond their reasonable control, which shall include without limiting the generality of the foregoing, severe weather conditions, transportation problems, etc.

3. Producer warrants that he/she has read and understands this Agreement and acknowledges that his document sets forth the entire and only agreement between Cargill and Producer and supersedes any prior or subsequent verbal or implied representations or understandings. This Agreement can only be modified by written agreement signed by both parties.

4. **THIS REQUEST IS NOT VALID UNLESS IT CONTAINS THE SIGNATURE OF THE PORKWORKS BUSINESS MANAGER FOR CARGILL. NO OTHER CARGILL EMPLOYEE IS AUTHORIZED TO SIGN ON CARGILL'S BEHALF.**

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

IN WITNESS WHEREOF, the parties have signed this document on the date written above.

CARGILL, INCORPORATED  
Animal ~~Nutrition~~ Division

BY: \_\_\_\_\_

~~Witness~~ \_\_\_\_\_

~~Business Manager~~

Witness U \_\_\_\_\_

Proprietor/Gen. Partner/Officer  
(Please circle one)

Witness \_\_\_\_\_

Proprietor/Gen. Partner/Officer  
(Please circle one)

Recommended by: \_\_\_\_\_

Territory Manager \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

**NOTE TO PRODUCER:** The territory manager may not bind Cargill to this Request. This Request is binding upon Cargill only when signed by the PorkWorks Business Manager.



EXCEL CORPORATION  
LEAD VALUE MATRIX

	1-140	141-147	148-154	155-162	163-169	170-176	177-184	185-191	192-198	199-205	207-213	214-221	222-228	229-235	236-242
82%	82%	82%	83%	100%	106%	106%	111%	111%	111%	111%	111%	111%	108%	105%	105%
81%	81%	80%	82%	100%	106%	106%	110%	110%	110%	110%	110%	110%	107%	104%	104%
80%	80%	80%	91%	100%	107%	107%	108%	108%	108%	108%	108%	108%	106%	103%	103%
79%	79%	86%	90%	100%	108%	108%	108%	108%	108%	108%	108%	108%	106%	102%	102%
78%	78%	84%	89%	97%	105%	105%	107%	107%	107%	107%	107%	107%	104%	101%	101%
77%	77%	82%	88%	96%	104%	104%	105%	105%	105%	105%	105%	105%	103%	100%	100%
76%	76%	80%	87%	97%	103%	103%	105%	105%	105%	105%	105%	105%	102%	99%	99%
75%	75%	78%	86%	96%	102%	102%	104%	104%	104%	104%	104%	104%	101%	97%	97%
74%	74%	76%	85%	96%	101%	101%	103%	103%	103%	103%	103%	103%	100%	96%	96%
73%	73%	74%	84%	94%	100%	100%	102%	102%	102%	102%	102%	102%	99%	93%	93%
71%	71%	72%	83%	93%	99%	99%	101%	101%	101%	101%	101%	101%	98%	91%	91%
70%	70%	70%	82%	92%	98%	98%	100%	100%	100%	100%	100%	100%	97%	88%	88%
68%	68%	69%	80%	90%	97%	97%	99%	99%	99%	99%	99%	99%	96%	85%	85%
67%	67%	68%	78%	88%	96%	96%	98%	98%	98%	98%	98%	98%	95%	82%	82%
66%	66%	67%	76%	86%	94%	94%	97%	97%	97%	97%	97%	97%	94%	79%	79%
65%	65%	66%	74%	84%	92%	92%	96%	96%	96%	96%	96%	96%	93%	76%	76%
64%	64%	65%	72%	82%	91%	91%	94%	94%	94%	94%	94%	94%	91%	73%	73%
63%	63%	64%	70%	80%	89%	89%	92%	92%	92%	92%	92%	92%	89%	70%	70%
62%	62%	63%	68%	78%	87%	87%	90%	90%	90%	90%	90%	90%	87%	67%	67%
61%	61%	62%	66%	76%	85%	85%	88%	88%	88%	88%	88%	88%	85%	64%	64%
60%	60%	61%	64%	74%	83%	83%	86%	86%	86%	86%	86%	86%	83%	61%	61%
59%	59%	60%	62%	72%	81%	81%	84%	84%	84%	84%	84%	84%	81%	58%	58%
58%	58%	59%	60%	70%	79%	79%	82%	82%	82%	82%	82%	82%	79%	55%	55%
57%	57%	58%	59%	68%	77%	77%	80%	80%	80%	80%	80%	80%	77%	52%	52%
56%	56%	57%	58%	66%	75%	75%	78%	78%	78%	78%	78%	78%	75%	50%	50%
55%	55%	56%	57%	64%	73%	73%	76%	76%	76%	76%	76%	76%	73%	47%	47%
54%	54%	55%	56%	62%	71%	71%	74%	74%	74%	74%	74%	74%	71%	45%	45%
53%	53%	54%	55%	60%	69%	69%	72%	72%	72%	72%	72%	72%	69%	42%	42%
52%	52%	53%	54%	58%	67%	67%	70%	70%	70%	70%	70%	70%	67%	40%	40%

NOTE: All discounted live dollars are not applied to the base prices of all carcasses weighing 200 pounds or greater.

# EXCEL



October 20, 1997

Dear

I wanted to follow up our phone conversation with some more detailed information on long term agreements available with Excel. I believe in talking with you that the following agreement types were the ones you were most interested in.

**Floor Agreement-** Under this type of agreement you would have a minimum floor carcass base price, and receive a percentage of the carcass base price when it is over the floor. For example, if your floor was \$42.00/live cwt., you would receive 96% of the base price when the market was above \$42. Therefore, if the market was \$38, your base would be \$42, and if the market was \$50, your base would be \$48. This allows you to still receive most of the benefit of the market as it goes up, while still protecting you on the down side.

**Window Agreement-** Under this type of agreement you would have an agreed upon window, and split the difference 50/50 when the base price is below or above the window. For example, if the window was \$42-48, and the base market that day was \$38, then your base would be \$40. This agreement reduces the market extremes, while still giving you full benefit of the market when it is between \$42 and \$48.

We can also do an escrow or straight formula price agreements, if you would be interested in one of them. If there is some other agreement type that you would like to discuss, please let me know, we would be glad to take a look at it.

All of our agreements are set up on a plant delivered base price. You would receive all your premiums based on how your hogs cut. There are a couple of options to how we establish your base price. We would look at using something off the CME 3 Area Base Cost or the Western and/or Eastern Cornbelt markets. I can provide you with some history numbers on these markets if you are not familiar with them.

These are the main points of an agreement. As we get further along in our discussions, I will be glad to share a full copy of our agreement with you that gets in to much more detail on the requirements of both parties, as well as the legal issues.

, we are looking to work with progressive producers to be a partner in a win-win type relationship, and are dedicated to the swine industry. From what Gene and Galen have told me about you, you are certainly the kind of producer we would like to have a long term relationship with. I appreciate your interest in a long term agreement with Excel. If you have any questions, or would like some more information, please feel free to give me a call anytime.

Sincerely,



Doug Ott  
Long Term Procurement Manager